IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.65 OF 2006

The Commissioner of Customs ..Appellant

Vs.

M/s.Man Industries (I) Ltd. ..Respondents

Mr.K.R.Choudhari with Ms.S.V.Bharucha for the Appellant.
Mr.V.S.Nankani with Mr.Vipin Jain i/b. Mr.P.K.Shetty for the Respondents.

CORAM :- DR.S.RADHAKRISHNAN &
J.P.DEVADHAR,JJ.

DATE : 7TH MARCH, 2007

P.C.

1. Heard the learned Counsel for the parties. By this Appeal, the Appellant is seeking to raise the following four questions of law:

A. "Whether the 'Conversion' of Shipping Bill from one scheme to another is a change substantive in nature and different than the 'Amendment' of document as envisaged u/s.149 of Customs Act,1962?"

B. "Whether the Hon'ble CESTAT was justified in holding that 'Amendment' of document as u/s.149 of Customs Act,1962 and Conversion of Shipping Bills from one scheme to another are one and same?"

C. "Whether the Hon'ble CESTAT was justified in relying on the decision in the case of Smruti Pottery Works 2004 (163) ELT 184 which deals with free shipping bill whereas in the instance case the Shipping bills are not free shipping bills ?"

D. "Whether the Hon'ble CESTAT was justified in holding that the Board Circular No.04/2004-Cus dated 16/01/2004 is applicable to the exporter without considering that the exporter satisfies all the conditions mentioned therein?"

2. In the present case, the Respondent had imported the goods under the DEEC licence with an Export Obligations. However, while submitting the documents, it appears that the Respondent had inadvertently stated in Shipping Bill that they were seeking a benefit under DEPB Scheme. Later on after realising the mistake, the Respondent sought conversion of the same into DEEC Scheme. We have perused the Order-in-Original, wherein the Commissioner of Customs (Export) has categorically given a finding as under :-

"Here, I find that the exporters M/s.Man Industries (I) Ltd were entitled to avail the benefits of DEEC Scheme but they suo motu and on their own choice preferred export under DEPB Scheme."

3. We have also perused the Order of the CESTAT, wherein it is clearly observed as under :-

"By application of this principle, it ought to be held that even if the Appellant's case did not fall within four corners of the Board's Circulars in question, the claim was eligible for consideration independently subject to provision of Section 149 of the Customs Act,1962 and, in view of the facts and circumstances of the case, particularly the undisputed position that the entire claim for conversion of the Shipping Bills was based on documentary evidences in form of Chartered Engineers & Range Superintendent of Central Excise Certificates, arrived at on documents

> and material anterior to export i.e. which were in existence at the time of export of the goods, as is the requirement in the proviso to Section 149.
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> 23. Since the entire claim of the Appellant is established on the basis of documentary evidence already in existence at the time of export, there was no valid reason for the Commissioner to have refused such an amendment. The impugned order passed is therefore clearly untenable and is to be set aside.

4. From the aforesaid facts, it is clear that it is merely a finding of fact on the basis of the documents furnished by the Respondents and there is no substantial question of law involved in the matter. There is no dispute regarding the correctness of the documents relied upon by the Respondents before the Tribunal. Accordingly, the Appeal stands dismissed.

(J.P.DEVADHAR,J.) **(DR.S.RADHAKRISHNAN,J.)**